

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GILDA M. COKER
Plaintiff

vs.

Christine Todd Whitman, Adm., EPA
Defendant

: 02-cv-3735
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:
:

ORDER

AND NOW, this day of November, 2002, upon review of Defendant's Motion for Leave to File their Response Out of Time, Plaintiff not being prejudiced by the delay, it is hereby ORDERED that Defendant's Motion is GRANTED. Defendant has until November 26, 2002 to file her response to plaintiff's complaint.

BY THE COURT:

HARVEY BARTLE, III
Judge, United States District Court

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GILDA M. COKER	:	02-cv-3735
Plaintiff	:	
	:	
vs.	:	
	:	
Christine Todd Whitman, Adm., EPA	:	
Defendant	:	
	:	

MOTION FOR LEAVE TO FILE RESPONSE OUT OF TIME

AND NOW, comes Defendant by and through her counsel, Patrick L. Meehan, United States Attorney for the Eastern District of Pennsylvania, and Linda Shafer Bocchnino, Assistant United States Attorney, and hereby respectfully request that this Honorable Court permit Defendant to file her response to the within Complaint out of time for the reasons that: (1) Defendant's delay in filing this motion was due to a calendaring oversight on the part of assigned counsel , and (2) Plaintiff will not be prejudiced by the delay, as more fully explained in the memorandum of law attached hereto.

Respectfully submitted,

PATRICK L. MEEHAN
United States Attorney

JAMES G. SHEEHAN
Chief, Civil Division

Filed: November 22, 2002
LINDA SHAFER BOCCHINO
Assistant United States Attorney
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GILDA M. COKER	:	02-cv-3735
Plaintiff	:	
	:	
vs.	:	
	:	
Christine Todd Whitman, Adm., EPA	:	
Defendant	:	
	:	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S
MOTION FOR LEAVE TO FILE RESPONSE OUT OF TIME

STATEMENT OF FACTS

A previous motion for extension of time was granted based on the following circumstances:

The United States Attorney's Office (USAO) became aware of the within complaint, alleging discrimination on the part of certain employees of the Environmental Protection Agency (EPA), when the local EPA Office faxed a copy to the USAO. [Ex. 1]

After verifying with the USAO's electronic docket that no service had been made, AUSA Bocchino wrote to plaintiff, advising her that service of the complaint had not been perfected upon the USAO. [Ex. 2]

Having waited an appropriate amount of time, and not having heard from plaintiff, AUSA Bocchino prepared to file a motion to dismiss for lack of service. In preparation thereof, AUSA Bocchino checked the USAO's Civil electronic docket and confirmed that service still had not been made. Upon checking the U.S. District

Court's electronic docket , AUSA Bocchino discovered an entry stating that the U.S.

Attorney's Office had been served with a copy of the complaint, allegedly on June 13, 2002. (The entry is dated July 16, 2002) [Ex. 3]

The U.S. Attorney's Office had no record of having been served with the complaint in this matter. However, given the District Court Clerk's entry, the U.S. Attorney's Office filed a Motion for Leave to File a Response Out of Time, which this Court granted. [Ex. 3]

It was subsequently determined that the U.S. Attorney's Office was not served with a copy of the complaint by pro se plaintiff until September 3, 2002. [Ex. 4]

Pursuant to F.R.Civ.P. 12(a)(3)(A), the United States has sixty days from date of service of the complaint upon the U.S. Attorney in which to file a response. Inasmuch as Defendant agency was still in the process of gathering the administrative documents relevant to the several EEO claims alleged by plaintiff and needed the full amount of time permitted under the rules to adequately respond to the complaint, AUSA Bocchino filed a Motion for Extension of Time requesting that Defendant agency be permitted the full sixty days allotted under F.R.Civ.P. 12(a)(3)(A) to prepare its response to the within complaint. This Court granted Defendant's motion, giving Defendant until November 4, 2002 to file her response and for same to be considered timely. [Ex. 3]

Due to an oversight by AUSA Bocchino, the new deadline was not calendared at the time of receipt of the Court's Order. Having just recently discovered her error, AUSA Bocchino files this motion on behalf of Defendant, requesting leave to file out of

time pursuant to F.R.Civ.P.6(b)(2) for excusable neglect. Defense counsel sincerely apologizes to the Court and to Plaintiff for her oversight.

Wherefore, undersigned counsel, on behalf of Defendant, respectfully requests that this Honorable Court grant Defendants's leave to file their response to Plaintiff's complaint out of time on Tuesday, November 26, 2002.

LEGAL ARGUMENT

Federal Rule of Civil Procedure 6(b)(2) permits a party to file a pleading upon motion after expiration of the specified period permitted, where there is excusable neglect. Defense counsel erred in failing to calendar that new due date for Defendant's response and sincerely apologizes for her oversight.

The initial motion for leave to file out of time was based upon an erroneous docket, subsequent to which it was determined that service had not been made by plaintiff until September 3, 2002. The Court then granted Defendant's motion for leave to file a timely response by November 4, 2002. Counsel failed to calendar that deadline, but has taken steps to avoid such problems in the future and will be able to file a response in the present case no later than Tuesday, November 26, 2002. The case will then be back on track and there should be no prejudice to plaintiff.

Accordingly, counsel, on behalf of Defendant, respectfully requests that this Honorable Court grant Defendant leave to file her response out of time.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests the Court's permission to file her response out of time pursuant to F.R.Civ.P. 6(b).

Respectfully submitted:

PATRICK L. MEEHAN
United States Attorney

JAMES G. SHEEHAN
Chief, Civil Division

LINDA SHAFER BOCCHINO
Assistant U.S. Attorney

Filed: November 22, 2002

EXHIBIT LIST

- Ex. 1 - Cover Fax from EPA to U.S. Attorney's Office advising of suit.
- Ex. 2 - Letter to Gilda Coker re lack of proper service on the United States in accordance with F.R.Civ.P. 4(i)(1).
- Ex. 3 - U.S. District Court Docket - Civil Action No. 02-cv-3735
- Ex. 4 - Plaintiff's cover letter to U.S. Attorney's Office's with USAO Stamp with date and initials showing date of service as September 3, 2002.

CERTIFICATE OF SERVICE

I, Linda Shafer Bocchino, Assistant United States Attorney, hereby certifies that I causes a true and correct copy of the within Motion for Leave to File Response Out of Time, was served this day, by First Class mail, prepared, upon:

GILDA COKER
232 S. Melville Street
Philadelphia, PA 19139

By: _____
LINDA SHAFER BOCCHINO

Dated: November 22, 2002